

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

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In the Matter of )  
 )  
Tariff Filing Requirements for ) CC Docket 93-36  
Nondominant Common Carriers )  
 )

OPPOSITION OF SPRINT

Sprint Communications Company L.P. ("Sprint"), pursuant to Section 1.429(f) of the Commission's Rules, 47 CFR §1.429(f), opposes the petitions by Bell Atlantic and SBC Communications Inc. ("SBC") seeking reconsideration of the Commission's Order, FCC 95-399 released September 27, 1995 in the above-referenced proceeding ("September 27 Order"). Sprint respectfully requests that such petitions be denied and in support thereof states as follows.

The Commission's September 27 Order is, for the most part, a "housekeeping" item. With the exception of the provision allowing nondominant carriers to file rate ranges instead of fixed rates -- the provision struck down by the D.C. Circuit's decision in *Southwestern Bell Corporation v. FCC*, 43 F.3d 1515 (D.C. Cir. 1995) ("Southwestern Bell") -- the September 27 Order restores the rules further streamlining "the form, content and notice requirements for tariffs filed by domestic nondominant common carriers," *id.* at ¶4, which were adopted by the Commission in its *Memorandum Opinion and Order*, 8 FCC Rcd 6752, issued

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August 18, 1993 in this proceeding ("*Nondominant Filing Order*"). Such restoration became necessary because the Court in *Southwestern Bell* vacated the Commission's *Nondominant Filing Order* in its entirety even though the range rate provision was the only rule challenged by the petitioners and the only provision addressed by the Court in its decision. See *Southwestern Bell*, 43 F.3rd at 1517; *September 27 Order* at ¶1.

The *September 27 Order* also corrects an oversight regarding the amendments to Section 43.51 of the Commission's Rules, 47 CFR §43.51 which were adopted in the *Nondominant Filing Order*. Specifically, the Commission amended Section 43.51 governing the filing of carrier-to-carrier contracts by nondominant carriers by deleting references therein to the Commission's forbearance policies. Such action by the Commission became necessary in the wake of the D.C. Circuit's decision in *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992) cert. denied, *MCI v. AT&T*, 113 S.Ct. 3020 (1993) which found that the Commission's forbearance policies were *ultra vires*. Apparently, the amendments, as subsequently corrected by an *Erratum* issued August 31, 1993, were not included in the Federal Register publication of the *Erratum* and therefore do not currently appear in the *Code of Federal Regulations*. *September 27 Order* at ¶18<sup>1</sup>

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<sup>1</sup> The *September 27 Order* also disposes of the petition for partial reconsideration of the *Nondominant Filing Order* filed by

Plainly, the *September 27 Order* neither sets forth new policy nor adopts new rules. It is, in effect, a procedural order rather than one of substance. Nonetheless, SBC and Bell Atlantic challenge the *September 27 Order* on substantive grounds.

SBC argues that because the Commission's *September 27 Order* fails to address its challenge to the dominant/nondominant scheme, such Order "perpetuates a key error that infected the *Nondominant Filing Order*." Petition at 3. SBC complains that the Commission still has not explained how the application of different tariffing requirements to different groups of competitors operating in the same markets is in the public interest and has not "confronted the obvious inconsistency" between the assumptions underlying its long-standing dominant/nondominant classification system and "the animating premise of this proceeding -- that competition has developed in both the interstate and local exchange markets." *Id.* However, SBC's argument here ignores the fact that "the scope of this proceeding did not include ... modification of the dominant/nondominant regulatory dichotomy." *Nondominant Filing Order* at 6754, footnote omitted. As the Commission explained, the only purpose of this proceeding "was to consider the

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Ad Hoc Telecommunications Users Committee and the motion for partial stay filed by AT&T. Neither Bell Atlantic nor SBC seek reconsideration of the Commission's rulings on the Ad Hoc petition or the AT&T motion.

appropriate tariff filing requirements for carriers affected by the decision of the District of Columbia Circuit invalidating the Commission's 'forbearance' rules." *Id.*, footnote omitted. Thus, because the regulatory obligations imposed upon dominant carriers were not affected by the Court's decision and because "[n]othing in that decision suggested that the Commission also should take another look at the dominant and nondominant categories," Brief of the Federal Communications Commission in *Southwestern Bell* filed February 18, 1994 at 33, it simply was not necessary for the Commission to revisit its dominant carrier regulation and perhaps reclassify certain dominant carriers as nondominant.

SBC insists, however, that the *Southwestern Bell* Court "made clear that the Commission can no longer sidestep the issue" of whether its dominant/nondominant dichotomy remains valid. Petition at 3. In support, SBC cites language in a footnote in the decision in which the Court, in dismissing SBC's claim that the "FCC should reconsider the dominant/nondominant distinction," stated that "[a]ny subsequent agency rules that attempt to apply this dominant/nondominant distinction may give rise to Southwestern's claim and may provide a more appropriate context in which to consider it." 43 F.3d at 1525 n. 7. This statement can hardly be considered an unequivocal mandate to the Commission. Certainly the plain language of the footnote does not instruct the Commission to address SBC's challenge to the dominant/nondominant classification system in this proceeding.

The Court simply stated that it would not consider such challenge in the case before it and advised that another proceeding "may provide a more appropriate context." It did not suggest that the instant proceeding would provide such "appropriate context" or, for that matter, that the Commission had to review the issue at all.<sup>2</sup>

In fact, this case does not provide an "appropriate context" in which to review the Commission's dominant/nondominant regulatory regime since the merits of such regime were not at issue here. As the Commission has emphasized, the sole purpose of this proceeding was to adjust the tariff filing rules applicable to nondominant carriers. Thus, the Commission was not "attempt[ing] to apply this dominant/nondominant distinction" by changing the regulatory classification of carriers who may now be dominant or nondominant or perhaps by modifying the criteria used to classify carriers as dominant or nondominant.

In any case, this case would be a particularly inappropriate vehicle to re-examine the application of the dominant/nondominant

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<sup>2</sup> There is nothing in the Court's decision or in the language relied upon by SBC that the Court views the dominant/nondominant carrier dichotomy with suspicion. On the contrary, in prior decisions, the D.C. Circuit recognized (with apparent favor) the Commission's dominant/nondominant regulatory regime, *MCI v. FCC*, 765 F.2d 1186, 1196 (D.C. Cir. 1985), and endorsed the policy objectives such regime was designed to foster. *AT&T v. FCC*, 978 F.2d 727 at 736 (D.C. Cir. 1992) cert. denied, 113 S.Ct. 3020 (1993). It is highly unlikely that the Court would have disagreed with such prior decisions *sub silentio* and in a footnote.

classifications because SBC has failed to provide any convincing reason why it should be entitled to nondominant status. Although it claims that the telecommunications market has changed in the 15 years since the Commission adopted its dominant/nondominant regulatory scheme, it does not deny that it retains control of bottleneck local exchange facilities which served as the basis for its dominant classification in the first place. See, e.g., *Competitive Carrier Rulemaking*, 85 FCC 2nd 1, 22-24 (1980).<sup>3</sup>

Its entire argument for nondominant status is based on the notion that if streamlined tariff filing requirements fosters competition, such streamlining should, as a matter of logic and the public interest, be applied to all carriers. Petition at 3-4. This argument is absurd. It is not illogical or contrary to the public interest for the Commission to impose different regulatory requirements upon carriers not similarly situated in the marketplace. This is especially true where one group of carriers possesses substantial market power and requires a greater degree of regulatory scrutiny in order to ensure that they do not exploit their market power to the detriment of the

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<sup>3</sup> SBC argues that the Commission has found that local exchange carriers face "significant competition" in their markets. In support, it refers to certain pages in the *NPRM* and *Nondominant Filing Order* issued by the Commission in this proceeding. Petition at 4. It does not, however, quote any language from either the *Notice* or *Memorandum Order* setting forth such alleged finding. Nor could it since the Commission has not found that local exchange carriers are subject to significant competition in their markets.

public. Competition is enhanced by the Commission's ability to concentrate its limited resources on efforts to guard against such exploitation by dominant carriers and not, as SBC would have it, by streamlining regulation for all carriers regardless of their market power.

In sum, nothing in SBC's petition here or in its previous filings requires that the Commission reassess its dominant/nondominant carrier distinction. If anything, SBC's inability to provide any data demonstrating that it no longer possesses market power and the fact that its challenge to such classification system rests upon the "logic of the *Competitive Carrier Order* itself," Petition at 8, confirms that its classification as a dominant carrier remains valid and there is no need to revisit or reconsider the regulatory approach adopted in the *Competitive Carrier* proceeding.

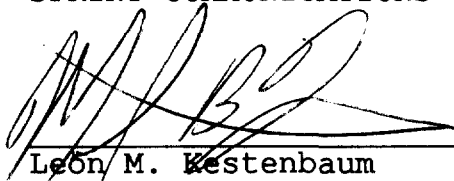
Similarly, there is no need to grant Bell Atlantic's reconsideration petition. Bell Atlantic argues that the Commission's decision to exempt nondominant carriers from filing copies of their contracts with other carriers exceeds the Commission's statutory authority and cannot stand. Petition at 1. However, such "exemption" was not adopted in the Commission's *September 27 Order*. Rather, as Bell Atlantic appears to acknowledge, the Commission modified its rules eliminating certain reporting requirements then imposed upon nondominant carriers, including the requirement that they file their

contracts with other carriers, in 1986. See Bell Atlantic Petition at 3 n. 7, citing *Amendment of Sections 43.51, 43.52, 43.53, 43.54 and 43.74 of the Commission Rules to Eliminate Certain Reporting Requirements*, 1 FCC Rcd 933 (1986). The Commission's September 27 Order simply eliminated the references in the rule to forborne carriers. Thus, since the September 27 Order did not adopt the rule complained of by Bell Atlantic, it is not subject to reconsideration requested by Bell Atlantic. If Bell Atlantic believes that the Commission's long-standing rule setting forth the filing requirements for nondominant carriers needs to be modified in some respects, it should file a petition for rulemaking requesting such modification.

For the reasons set forth above, the Commission should deny the petitions for reconsideration of SBC and Bell Atlantic.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.



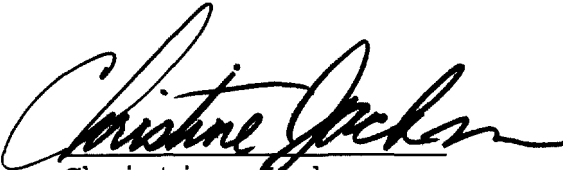
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **Opposition of Sprint** was sent by United States first-class mail, postage prepaid, on this the ~~2<sup>nd</sup>~~<sup>11<sup>th</sup></sup> day of January, 1996, to be parties on the attached list:

  
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